

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Part 74 of the Commission's Rules	)	MB Docket No. 18-119
Regarding FM Translator Interference	)	

**OPPOSITION TO PETITIONS FOR RECONSIDERATION**

The undersigned radio broadcasters (the “Joint Commenters”) submitted Comments (the “Joint Comments”) and Reply Comments (the “Joint Reply Comments”) supporting many of the reform initiatives in the Commission’s Notice of Proposed Rulemaking, *In the Matter of Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, MB Docket No. 18-119.<sup>1</sup> The Joint Commenters are well positioned to address the Commission’s efforts in this proceeding to balance the interests of listeners of primary FM stations against the interests of listeners of FM translator stations, as the majority of the Joint Commenters are licensees of both primary FM stations *and* FM translator stations, and thus have a stake on both sides to ensure that the Commission adopts a fair, balanced and efficient administrative process to address FM translator interference.

The Commission issued its *Report and Order*, FCC 19-40 (released May 9, 2019) (the “*Report and Order*”) adopting many of the proposed reforms to streamline its rules relating to interference caused by FM translators and to expedite the translator complaint resolution process. With the *Report and Order*, the Commission has raised the bar significantly for

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<sup>1</sup> *In the Matter of Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, FCC 18-60, MB Docket No. 18-119 (rel. May 10, 2018) (“*NPRM*”). Entercom Communications Corp. participated in the Joint Reply Comments.

actionable interference complaints by the affected station, with changes such as requiring a minimum number of listener complaints (versus the prior one complaint minimum), specifying standardized information for actionable complaints, and generally establishing an outer contour limit for the affected station when previously there was no such restriction.<sup>2</sup> The Commission also has adopted clearer, streamlined complaint resolution procedures and will allow FM translators to resolve interference issues by changing channels to any available same-band frequency via a minor modification.<sup>3</sup>

As the Joint Commenters, being licensees of both primary FM stations and FM translator stations, are well aware, in undertaking these reforms, the Commission applied its expertise gained over years of adjudicating FM translator interference complaints, as informed by the commenters in the proceeding, to balance many factors and factions to reach an administratively feasible result. The Commission observed in its *Report and Order*, “[b]ecause of the maturity of the FM service, we must not only balance the needs of translator, low power FM and full-service licensees, but also take into account concerns such as the overall noise floor and technical integrity of the FM band. We believe that the measures adopted herein strike a balance between managing FM band spectrum, providing greater certainty for translator operators, and preserving existing protections for full-service stations...”<sup>4</sup>

A handful of Petitions for Reconsideration have been filed seeking reconsideration of portions of the *Report and Order*. Turning first to the Petition for Reconsideration from Charles M. Anderson, he requests “that the interference limit contour of

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<sup>2</sup> See *Report and Order* at ¶ 1.

<sup>3</sup> See *id.* at ¶¶ 1.

<sup>4</sup> *Id.* at ¶ 4.

45 dBu be reset to the 54 dBu specified in the original NPRM, that translators' and LPFM's interference complaint limiting contour be set at 60 dBu ...."<sup>5</sup> As to the 45 dBu affected station outer contour limit adopted by the Commission in the *Report and Order*, Anderson questions the data submitted by the Joint Commenters documenting significant audience beyond the originally considered 54 dBu contour.<sup>6</sup> Specifically, Anderson takes issue with such study being based on "cume" audience data and zip code centroids for panelist's home addresses.<sup>7</sup>

The Joint Commenters undertook a "big data" analysis across 43 markets nationwide utilizing Nielsen audience data (which is routinely relied upon by the radio broadcasting industry and advertisers), providing the Commission with real world evidence to inform its rulemaking decisions in this proceeding. Nielsen "Cume Persons," the empirical basis of the Joint Commenters' study, is an established Nielsen audience data point, as noted by the Joint Commenters,<sup>8</sup> and as recognized by the Commission.<sup>9</sup>

The Commission already has addressed and rejected Anderson's critique of the Joint Commenters' study's "reliance on listeners' home addresses and zip code centroids" stating that "the Joint Commenters explain that there is a close correlation between at-home and away listening and that the home address data serves as the 'best current measure available as to radio

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<sup>5</sup> See Charles M. Anderson Petition for Reconsideration at 1 ("Anderson Reconsideration").

<sup>6</sup> See *id.* at 2.

<sup>7</sup> See *id.*

<sup>8</sup> See Joint Comments at n. 15 and Declaration of Jeff Littlejohn at ¶ 6.

<sup>9</sup> See, e.g., *In the Matter of Economic Impact of Low-Power FM Stations on Commercial FM Radio: Report to Congress Pursuant to Section 8 of the Local Community Radio Act of 2010*, MB Docket No. 11-83, *Report*, DA 12-2 at ¶13 (rel. Jan. 5, 2012) ("For portions of our analysis, we also will examine the metric Cume Persons, which provides a measure of how many different people have listened to the station for the week....").

listening at various contour strengths.”<sup>10</sup> Specifically, the Joint Commenters cited to a commissioned Nielsen survey of radio listeners that establishes the close ties between at-home listening and away listening, with 82% of respondents agreeing or strongly agreeing that “I usually listen to the same radio stations while I am away from my home that I listen to while I am at home.”<sup>11</sup> As the Commission previously noted in the *Report and Order*, and still the case now, “Anderson does not suggest a preferable method for approximating nationwide listenership at various signal strength contours and [we] agree with the Joint Commenters that the data presented in the record is an adequate basis for our listenership analysis.”<sup>12</sup>

Furthermore, the Commission relied in the *Report and Order* on more than the Joint Commenters’ study, stating, “The majority of commenters . . . provide extensive evidence from markets nationwide to support their contention that full-service stations have substantial listenership outside the 54 dBu signal strength contour—listenership that would be at risk if interference complaints outside this limit were not considered actionable.”<sup>13</sup> Clearly then, the Commission relied on the Joint Commenters’ data as well as *additional* extensive evidence in

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<sup>10</sup> See *Report and Order* at n. 158.

<sup>11</sup> See Joint Comments at 5, 10-11. Also, Anderson complains about the Joint Commenters’ study’s use of “zip code centroids,” notwithstanding that such a center point is far more conservative than using a zip code’s full geographic boundaries: a handy definition of a “zip code centroid” is “If zip code is represented by a polygon, then centroid [sic] is a mean or average of all points inside that polygon, or in more intuitive terms, it is a middle of that polygon, or *center point of the zip code area*.” See Quora (“What is a ‘centroid’ of a zip code in GIS?”) (emphasis added) at <https://www.quora.com/What-is-a-centroid-of-a-zip-code-in-GIS>. In any event, even taking at face value Anderson’s argument that many zip codes “extend[] across a 6 db contour span,” Anderson Reconsideration at 2, the Joint Commenters’ study substantiated setting the outer contour limit at 39 dBu based on measured audiences through that zone. With the *Report and Order* adopting a 45 dBu outer contour, which is 6 db stronger than the 39 dBu, Anderson’s 6 db discount has in practice been adjusted for.

<sup>12</sup> See *Report and Order* at n. 158.

<sup>13</sup> See *Report and Order* at ¶ 37; see also *id.* at n. 142, n. 145 (citing additional evidence from commenters of substantial listenership outside the 54 dBu signal strength contour).

adopting an outer counter limit for actionable interference complaints that is less restrictive than the originally considered 54 dBu contour.<sup>14</sup>

In sum, the Commission was on solid empirical ground when it concluded that “[t]he record indicates that a significant amount of FM listening occurs beyond the average 54 dBu contour and that setting a limit on actionable complaints at this signal strength would be economically damaging to many broadcasters.”<sup>15</sup>

It is also noted that certain of the Petitions for Reconsideration have concerns with the *Report and Order*’s requirement that affected stations submit documentation using undesired/desired (“U/D”) ratios, employing the Commission’s standard contour prediction methodology, to demonstrate “that at each listener location the ratio of undesired to desired signal strength exceeds -20 dB for co-channel situations, -6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations.”<sup>16</sup>

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<sup>14</sup> Skywaves Communications LLC “believes 45 dBu is an excessive level of protection” and full service stations should be entitled to protection from FM translator interference only to the full service station’s “protected contour.” See Skywaves Communications LLC Petition for Reconsideration at 2 (“Skywaves Reconsideration”). Not only does Skywaves’ argument rely on a theoretical “prudent translator proponent,” it ignores the secondary status of FM translators, which the Commission stressed that the *Report and Order* does not alter. See *Report and Order* at ¶ 45.

<sup>15</sup> See *Report and Order* at ¶ 40. The Joint Commenters will leave to it others to address the LPFM issues raised in the Petitions for Reconsideration. It is noted that the contention that extending 45 dBu protection to LPFMs is in conflict with the Local Community Radio Act of 2010, see Anderson Reconsideration at 4-5, is addressed by REC Networks’ July 18, 2019 filing (“REC Networks Reconsideration”). Other LPFM issues raised on reconsideration, including calling for preclusion studies for modifying FM translators, see KGIG-LP Petition for Reconsideration (“KGIG-LP Reconsideration”) and LPFM Coalition Petition for Reconsideration (“LPFM Coalition Reconsideration”), have already been considered by the Commission in its *Report and Order*, see e.g., ¶ 9 (“We reject the suggestion of the LPFM Coalition that the facilities specified in a translator channel change modification application must not preclude future LPFM licensing opportunities in the relevant market.”).

<sup>16</sup> See *Report and Order* at ¶ 23.

Specifically, Skywaves observes that the “revised rule requires an FCC contour-based U/D study for each and every complaint,” and that “[t]his is appropriate for complaints outside the protected contour, but it fails within.”<sup>17</sup> Skywaves explains that “[n]ew and modified FM translator permits are granted only when the U/D ratio is met at each co-channel and first-adjacent protected station’s standard f(50,50) protected contour (60 dBu for most classes and all reserved-band NCEs, 57 dBu for non-reserved-band Class B1 and 54 dBu for non-reserved-band Class B). The U/D ratio decreases within the protected contour as you approach the protected transmitter.”<sup>18</sup> Skywaves concludes that “[t]he imposition of standard U/D ratios using standard FCC contour methodology has dire unintended consequences... *it appears that the new rule would eliminate from consideration all complaints of co-channel and first-adjacent channel translator interference within a protected station’s protected contour.*”<sup>19</sup> Consequently, Skywaves urges that “this portion of the rule should be reworded to make it clear that the U/D ratio criterion applies only outside the protected contour.”<sup>20</sup>

The Joint Commenters agree with Skywaves that there likely is a real, albeit probably rare, possibility that the U/D threshold for actionable complaints as set out in the revised rules could bar *bona fide* interference complaints based upon listeners within a desired station’s protected contour. Certainly, the Commission can, and should, proceed without delay to process FM translator complaints as set forth in the *Report and Order* by determining actionable listener complaints based on showings of U/D ratios (using standard FCC contour methodology). Nevertheless, given the valid concern of unintended consequences raised by

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<sup>17</sup> See Skywaves Reconsideration at 2.

<sup>18</sup> See *id.*

<sup>19</sup> See *id.* at 1-2.

<sup>20</sup> See *id.* at 2.

Skywaves, the Commission should entertain fine-tuning Sections 74.1203(a)(3) and 74.1204(f) *to exempt listening locations from within the desired station's protected contour from the U/D showing.*<sup>21</sup>

The Joint Commenters commend the Commission for its balanced approach set forth in the *Report and Order* which can be anticipated to bring more consistency, predictability and speed to the process for resolving FM translator interference complaints. Except as set forth above in support of the Commission exempting listening sites within the desired station's protected contour from U/D showings in establishing actionable interference locations, the Joint Commenters, on the issues addressed herein, oppose the requests for reconsideration of the *Report and Order*.

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<sup>21</sup> REC Networks has a concern with “the use of the -20 dBu undesired to desired ratio (U/D ratio) for determining interference,” so that “a station could formulate an interference complaint in areas where the new FM translator only places a 26 dBu contour.” See REC Networks Reconsideration at 1. However, the Commission’s new requirements for actionable complaints, including new minimum numbers of listeners, is a structural guard against REC Networks’ concerns of fraudulent and frivolous claims against very well distant translators.” Nor need the Commission stay, revamp or otherwise suspend the new rules, as suggested by the LPFM Coalition, for failing to allow the submission of “Longley Rice calculations and other such propagation models and methodologies” in order to qualify listener locations as actionable. See LPFM Coalition Reconsideration at 18-21. Given the need for administrative predictability and efficiency, the Commission is within its discretion to rely on “the U/D zone of potential interference test,” particularly since the adopted “45 dBu contour-based limitation on actionable interference complaints will eliminate many interference complaints that may be actually due to weak, distant signals from the desired station or related issues such as multipath fading, atmospheric ducting, poor reception, or other conditions.” See *Report and Order* at ¶ 24 (footnote omitted).

KGIG-LP asserts that the Commission is constrained by *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945), from allowing FM translators to change to any available same-band FM channel as a minor change upon a showing of actual or predicted interference. See KGIG-LP Reconsideration at 1-2. It is noteworthy, as stated by the Commission, that this minor modification option for FM translators “harmonizes closely with our policy for LPFM stations under section 73.870(a) of the Rules.” See *Report and Order* at ¶ 8.

Respectfully submitted,

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